United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

75-7524

DOCKET NO. : 75-7524

DATE OF SUBMISSION : 10-24-75

B

CASE: 74 CIV 218 : JOSEPH A. DE NISE

PLAINTIFF,

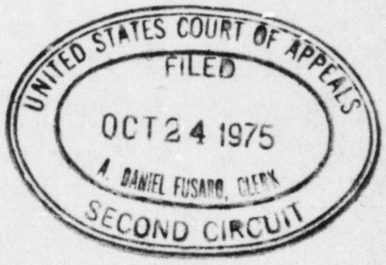
V.

P/S

C. V. ROWLAND DEFENDANT.

TO BE ARGUED: PRO SE

Brief and appendix



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I'd like to begin by thanking the second court for granting my recent request for reinstatement of appeal, thereby permitting this pro se presentation; an alternative I accept only due to inability to find suitable counsel even with the generous time stipulation already afforded me. In so doing, I am acutely conscious of my complete lack of any legal background whatsoever--a state of awareness simultaneously jostled by the portentousness of the rather well known adage concerning the dubious level of intellectuality ascribed to the party of a legal matter who, whether by choice or perforce, represents himself! Nonetheless, I remain most concerned by what might, under these circumstances prove to be an unworthy imposition upon the court's calendar and, as such, feel compelled to note at this inchoative stage of discussion my full responsibility for holding the court's attention only as long as my unprofessional perspective coincides with what is indeed the Law.

An appeal, I assume, is based on a divergent perspective from that in which a decision rendered has been conceived, the relative merits of which are adjudicated by the reviewing authority. Perhaps it would therefore be appropriate to begin with an affirmation of that basis for the decision with which I fully concur.

On the basis of both briefs submitted by counsel who initially represented me (documents #1 and 6) I have not the slightest doubt that the February 20, 1975 dismissal decision of the first court is totally justified. My surety is enforced not only by my faith in the judiciousness and equity accorded my case but, as well, by two auxiliary attorneys each of whom augured the dismissal by their independent opinion of the inappropriateness of the presentation of the essence of my case in these two briefs. It was due to these comparatively late received assessments that my personally written supplementary affidavit of October 16, 1974 was submitted to the first court--purposefully to supersede the briefs in its explicit, if not abbreviated, account of the situation

resulting in my seeking legal recourse. As document #7 (herein corrected on the docket sheet to read plaintiff's--not defendant's--supplementary affidavit as previously indicated) was received and, ostensibly, considered prior to the rendered decision, it is primarily on this basis that I come before the court this day.

If an effort were made to integrate every aspect of this case--of whatever varying degree of relevance--into consideration, only those having accrued in writing during the more than 2 year duration of this matter would turn this into a tome. With the court's indulgence, it would seem obligatory to focus on the decision itself while condensing what I am able to construe the essence of my case into three fundamental questions, an affirmative answer to any one of which would summarily preclude any further consideration of this appeal:

1) Is the United States Postal Service, in its unique posture as per the recent Postal Reorganization Act, not subject to judicial review?

2) Does the alleged perpetration constitute no violation of law? To wit: Does the degree to which the tenuous matter of promotional consideration is not subject to judicial review extend to the point that an administrator may willfully and deliberately assign arbitrarily failing grades to written evaluation criteria which is by any judicious method of scoring whatsoever, unequivocally excellent and not failing, for the express purpose of indiscriminately eliminating candidates from consideration to which they are fully entitled?

3) Is there insufficient evidence to support this allegation, thereby justifying denial of the right to prove said allegation, as decreed by the first court's dismissal based on its consideration of the "undisputed facts"?

Having begun my discussion with a professed lack of any legal background, it would seem most appropriate to commence with my presumption upon the court in regard to my second question. If I may digress briefly, I believe I can best do this by recalling one of the very first indoctrination speeches I received after processing into the Security Division of the United States Air Force some years ago.

I well remember that hot, Texas afternoon and the sergeant who was delegated to impress upon the degree of responsibility we were receiving in what would be access to classified documents. Impress it upon us he did, for what seemed interminable hours of covering what must have been every single statute of pertinent military law. When finally his talk came to an end I was indelibly left with the irony of his final warning: that if in the course of any activity which he had not specifically covered something occurred which our conscience told us was wrong, we could rest damn well assured that somewhere in the code was a provision holding accountability for it! Trusting that the Civil Service Code is equally broad in scope, it is upon this premise that I approach the court and am therefore secure in my exemption from herein specifying any specific section of any code which may have been more appropriately noted for the first court. I must further add, however, my full cognizance of the fact that what may, from an unprofessional intellectual evaluation, seem undeniably wrong morally may be totally insupportable legally, particularly in a promotional matter wherein objectivity is itself often obviated by whatever degree of legal leeway normally rendering judicial review unjustified. If, however, I did not believe the specific perpetration charged far exceeds any such boundary and is not blatantly manifest in written form, I would not be imposing upon the court.

Moving on to my third question, in his Memorandum of Law in Support of Defendant's Motion to Dismiss Complaint (document #4) counsel has condensed the very essence of my allegation into his obser-

vation: "Plaintiff says nothing about others taking the tests or the standards that did or should apply. There is no basis for a claim that such facts constitute arbitrary, capricious, abusive, unfair or even unreasonable actions by the defendant". On the basis of both briefs submitted by my original counsel, this contention is indeed well taken. However, as I even now reread my supplementary affidavit, I remain at a loss as to how to respond more explicitely to defense counsel's observation and will not therefore overly impose upon the court by belaboring this point. In short, incontrovertible proof of the alleged perpetration is tenable in the very written form of said supervisory evaluation whether its assigned numerical grade be scored absolutely or relatively (in comparison with those of at least two other accountable candidates) and notwithstanding an inexplicable after-the-fact decision by the administrator to bypass its consideration only after this particular candidate had questioned its validity, it is therefore a fact that an arbitrary, capricious abusive, unequal, unreasonable and indeed illegal act was committed in an expedient and premature disqualification of candidates of superior relative qualification.

The first court remarks: "The affidavit (defendant's) states that, whereas normally a 66% on the supervisor's Performance/Potential Rating would have disqualified a candidate from proceeding further, it was decided that anyone scoring 90% or more on the written portion of the test would be invited to proceed further regardless of the supervisory ratings. Plaintiff was notified that he was eligible for the group discussion and that his supervisory rating would have no bearing on the final outcome of the selection process. Plaintiff was notified that he was scheduled to attend a group discussion on May 10, 1973. However, plaintiff did not appear. He gave no excuse.".

The April 19, 1973 advisement of the granting of this interview--and affirmation of the "failing" supervisory evaluation--was

extended only after the circumstances of the defendant's administtation of this promotional program were questioned after verbal inquiries to postal authorities for suitable explanation were fruitless. Hence, the decision to bypass consideration of the supervisory evaluations and grant interview originally denied in previous written communication was an after-the-fact decision. Parenthetically, it is noted in the decision that over 1100 candidates were eligible for but a few available positions (a fact noted in data not at the court's immediate disposal) and the decision itself further points out the only two criteria for interview determination: the written exam score and the supervisory evaluation consideration. Yet neither this April 19, nor any other advisement of the defendant is with the slightest suggestion as to the reason for readmitting to consideration a candidate whose performance/potential has been assessed as failing, particularly in light of the noted plethora of candidates assuredly more qualified on both criteria. While the right of an administrator to determine what criteria shall or shall not be used may normally be assumed absolute, under these self-confirmed circumstances would not the court--in its consideration of nothing more than such "undisputed facts"--been justified in questioning the reason for the defandant's action in deciding to bypass this segment of evaluation, especially at the time it did?

Yet the court, though privy to the supplementary affidavit makes not the remotest reference to its text and the fact of my subjection to an illegal administration of the United States Postal Service's Management Trainee Program in its inability to construe my "excuse" in "absenting" myself from said administration at the point I did. The decision is without mention of the court's assessment of the relevance of the perpetration charged. Or is the United States Postal Service not subject to judicial review regardless of the likelihood of the perpetration

charged? On all such seemingly relevant questions the decision is completely mute. Also, though perhaps of only peripheral significance, would it not have been appropriate for the court to command at least demonstration of the validity of my "failing" supervisory evaluation in view of its decision to deny my opportunity to prove this essential point?

I've above qualified my "absenting" myself from the interview administered by the defendant and the reason therefor is manifest as early as my April 29, 1973 letter to the New York Postmaster from which I quote in part: "With full awareness of the customary degree of variance in human interpretive experience, I must know how my evaluation can be "failing" when the supervisor who wrote it is hereby quoted as assessing it "highly favorable" and is herself completely unable to account for this inordinately extreme variance from her judgment?...As I'm sure you agree, Mr. Postmaster, with so vital a matter as equitable and competent promotional consideration manifestly questionable thus far, I must make every effort to have the credibility gap created by these ongoing inconsistencies bridged if I am to submit to the subjectivity of an interview at the very hands of those who have thus far evidenced such gross misjudgments during this comparatively objective segment of evaluation. I have the utmost faith that under your direction, this will be accomplished through the administrators of the United States Post Office Management Trainee Program.". I might incidentally add that my allusion to "ongoing inconsistencies" refers to the fact that a "failing" supervisory evaluation was in fact yet a second excuse proffered for original disqualification! However, on the assumption that it requires but a single illegal act to justify my actions, I have excluded the first entirely from discussion.

Still another correspondence not at the first court's disposal (though noted in the supplementary affidavit and included herein)

is the May 8, 1973 response to my April 29 inquiry, denying the request for suitable proof of the validity of any judicious method of scoring which could account for the assigned grade and endeavoring to explain its self-decreed failing, 66% on a 100% scale, as "indicative of individuals whose performance and potential are far above average and no inconsistency appears to exist between your rating and what you allege you were told by your supervisors." Whatever concession may have hitherto been afforded possible explanation for no more than gross misjudgment was patently dispelled by the defendant's own incomprehensible and ludicrous "explanation" and, consequently, my sole recourse to legal adjudication for whatever decision appropriate if my allegation is proven valid.

My May 15, 1973 discourse, which followed two other briefer such advisements, made a final restatement to the defendant of my readiness to report for interview upon suitable proof negating the allegation seemingly justified by all manifest evidence and postal attitude in the matter, further noting that all such allegations could be completely dispelled by a cross comparison of my supervisory evaluation with two other specific candidates' whose offered testimony based on their own witnessing of their evaluations by the respective foremen who completed them renders the employment of any judicious scoring system by the defendant an absolute impossibility. No further response was forthcoming from the administrators and hence my presence before the court this day.

I would have thought all of the preceding discourse was, if not explicit, certainly tacit in my supplementary affidavit and I therefore remain confused as to why the relevance of it all is totally without mention in the first court's consideration of the "undisputed facts". Indeed, it would appear that even an unprofessional interpretation such as this would justify the suggestion that the first court has exercised a singularly insular perspective in reaching its conclusion: a perspective that has obviously abandoned it from assessing the situation from

a more factually complete view which would have doubtlessly necessitated a reckoning of the focal points of the case. Certainly I have no question about the propriety of the consideration extended, as per the original presentation of my case and those technical part of the decision (particularly the very first paragraph) with which I am completely unable to deal. Hopefully, whatever the boundary precluding consideration of such seemingly relevant questions which may have been among those which the court deemed "unnecessary for me to reach" has hereby been removed.

Concluding with my first question, I noticed that counsel for the defendant has cited several cases in his briefs in support of his contention that the United States Postal Service is not, at least in this instance, subject to judicial review. Similarly, counsel who originally represented me did also specify several cases to support the opposing view. Again I am totally unable to voice as much as an opinion as to what I'd hope would be the court's prevailing opinion here. What then presumes my imposition upon the court in this regard?

1) The United States Civil Service Commission has declined intervention in this matter as per its recognition of the autonomy of the United States Postal Service as a result of the Posal Reorganization Act of 1971.

2) The union to which I belong, the American Postal Workers Union, has declined intervention on the grounds that this matter is not contractually accountable.

3) The National Labor Relations Board has upheld the stance of the union.

4) When, as a last resort, political intervention was sought for suitable investigation, it too was declined when postal authorities successfully precluded any such effort by propagating a postal provision forbidding any "outside" intervention in postal matters.

Hence, if the United States Postal Service is not judicially accountable in a matter such as this, what forum does a 14 year Civil Servant have to attempt to prove his allegation of a particularly injurious detriment to his career? If in this final analysis the United States Postal Service is not subject to judicial review what is there to prevent it from so expediting promotional programs by enacting a perpetration precisely as blatant as this with the total abandon it has demonstrated and that has thus far been sanctioned by its apparent autonomy over every agency in which accountability might have been assumed vested?

The pro se office has informed me that I will be afforded the right of personally pleading my case before the court in addition to this presentation. However, I've herein set forth my perspective as relevantly complete and explicitely as I am able and will therefore designate but a very limited period in the event the court itself feels that there may be something of pertinence which I've not covered.

I thank the Court of Appeals for its indulgence, as well as the pro se office which has been extraordinarily helpful in facilitating the procedures enabling me to personally present this appeal.

SUPPLEMENTARY AFFIDAVIT October 16, 1974

The plaintiff, represented by Mr. E. Prosnitz, Esq., will prove that the administrators of the United States Post Office Management Trainee Program, the New York Metro Regional Office of the New York Post Office, did wilfully and deliberately misrepresent written promotional documents in order to arbitrarily disqualify qualified promotional candidates from due consideration during the course of its administration of said promotional program. To wit, as specifically in the case of the plaintiff, the written supervisory evaluation—completed by an immediate supervisor on performance and management potential of the candidate—though, as in the plaintiff's case, incontrovertibly excellent by any judicious method of scoring whatsoever, was wilfully and deliberately assigned an unwarranted and arbitrarily failing grade (66%) thereby enacting the disqualification from further consideration of the candidate thus afflicted. Hence, rather than utilize said written supervisory evaluation as an adjunct in determining those candidates most excellently qualified for further consideration, as indeed its intended purpose, this solicitation of supervisory evaluations was instead utilized as the means by which the defendant enacted the blatant perpetration charged.

Further, in light of the exhaustion of all preliminary channels for the enactment of the investigation to disprove the charges substantiated by all manifest (written) fact by achieving understanding of how said failing, 66%, supervisory can be logically represented by the defendant as "indicative of individuals whose performance and potential are far above average" (May 8, 1973), Mrs. Miriam Oback, the immediate supervisor who completed the plainiff's supervisory evaluation, will testify in addendum to her already

submitted affidavit. If, for any reason, the adamance of the defendant in steadfastly refusing to open said evaluation to explanation persists, or said evaluation be unable to be presented during litigation for whatever reason, Mrs. Oback will, in written or verbal form, reaffirm both the evaluation and the subsequent affidavit, further noting that, in her opinion, anything but an excellent rating, whether said rating be numerically or verbally expressed, or whether said rating be absolutely or relatively determined, is impossible. Hence, it would appear that the oft presented request of the plainiff, long before this ultimate recourse to litigation was necessitated, was, in fact, not only reasonable, but utterly demanded by all manifest (written) fact and postal attitude in the matter; this request being a comparison be afforded the plaintiff between his failing evaluation and that of another candidate, to be specified by the plaintiff, that the asserted judiciousness of the scoring system employed by the administrators may lucidly manifest itself.

If further determined relevant, the plaintiff will be prepared to call other candidates who participated in this promotional program who incurred the identical perpetration charged. Though the efforts of such candidates to ascertain the reason for their disqualification from due consideration are without any written acknowledgement whatsoever from the sole source through which sought—the very administrators herein charged—said candidates are accountable for their supervisory evaluation and the highly unlikely failingness of said evaluation, as well as that of any other comparative qualification for the due promotional consideration also denied them by the perpetration herein charged the defendant.

Sworn to before me this 10th
day of October 1974

#204

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X
:
JOSEPH A. DENISE,
:
Plaintiff,
:
v. 74 Civ. 218
:
C. V. ROWLAND, OPINION
:
Defendant.
:
- -X

GRIESA, J.

Defendant moves under F.R. Civ. P. 12(b)(1) and 12(b)(6) to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim on which relief can be granted. Since I am considering not only the pleadings but also an affidavit submitted by defendant, I am treating the motion as one for summary judgment under Rule 56. The complaint is dismissed.

Plaintiff is a clerk employed by the United States Postal Service in New York City. His complaint alleges that he was wrongfully denied the opportunity to enroll in the Postal Service's Management Trainee Program. The complaint asserts that in January 1973 plaintiff took the examination for the program, receiving a score of 91% on the written portion of the examination, and also receiving a strong recommendation for the program from his supervisor. It is alleged that in spite of the above plaintiff was denied enrollment in the program. The complaint does not contain any allegation regarding the reason why such enrollment was denied.

In connection with defendant's motion, both sides have submitted briefs dealing with the propriety of the present suit as a device to review the action or inaction of the Postal Service. It is unnecessary for me to reach these questions.

Defendant has submitted an affidavit setting forth undisputed facts which dispose of plaintiff's claim. The affidavit states that on January 13, 1973 plaintiff, along with approximately 1100 other applicants, took a written examination for placement

in the Management Trainee Program. Plaintiff achieved a score of 91% -- well over passing. The affidavit states that following the written examination, plaintiff's immediate supervisor was requested to fill out a Performance/Potential Rating for plaintiff. Such ratings are given a numerical value -- 70% being the passing grade. Plaintiff scored a 66% on this rating. Normally it is necessary to obtain a passing score on this phase of the procedure in order for an applicant to enter the next phase of the steps toward the trainee program -- namely a participation in group discussion panels and an interview. The affidavit states that, whereas normally a 66% on the supervisor's Performance/ Potential Rating would have disqualified a candidate from proceeding further, it was decided that anyone scoring 90% or more on the written portion of the test would be invited to proceed further regardless of the supervisory ratings. Plaintiff was notified that he was eligible for the group discussion and interview phase of the testing and that his supervisory rating would have no bearing on the final outcome of the selection process. Plaintiff was notified that he was scheduled to attend a group discussion on

May 10, 1973. However, plaintiff did not appear. He gave no excuse. For this reason, plaintiff was eliminated from further consideration.

From these undisputed facts, it is clear that plaintiff himself was entirely responsible for his failure to go forward as a candidate for the Management Trainee Program.

The action is dismissed.

So ordered.

Dated: New York, New York
February 20, 1975

THOMAS P. GRIESA
U.S.D.J.

April 19, 1973

Dear Senator Javits:

This is in response to your letter of April 11, 1973, addressed to the Postmaster of New York, concerning Mr. Joseph A. Dellise, an employee of the New York Post Office, who seeks information regarding the "Post Office Management Trainee Program Examination".

The examination which Mr. Dellise took was given in several offices of the New York Region. The Regional Administrator of Special Management Programs advised that all persons who took the examination and scored 90 percentile or higher will be interviewed even though their evaluations by immediate supervisors were below the minimum of the required 70%. He further advised that Mr. Dellise is one of the eligibles scheduled to be interviewed during the month of May, 1973.

With kind regards.

Sincerely,

J. A. Matukonis
Congressional Liaison Officer

Honorable Jacob K. Javits
110 East 45th Street
New York, New York 10017

1010 Soundview Avenue
Bronx 10472 New York

April 29, 1973

Dear Postmaster Strachan:

I can only begin by offering the sincerest note of apology for this imposition upon your most pressing schedule. I'm a regular clerk in the Outgoing Mails here in the G. P. O. and have been unable to receive suitable assistance with a most vital career matter through intermediate postal echelons and must therefore seek your redirection. My inquiry concerns my candidacy for the U. S. Post Office Management Trainee Program.

As briefly as possible, Mr. Postmaster, on April 6, I was informed by the examination division that I was disqualified from further consideration for the program as my application was annotated "score (91%) not high enough". I feel it imperative to note at this point that this quote represents the only reason I was given for being denied the subsequent interview.

The accompanying photostat is the response I received from Senator Javits, who was kind enough to assist me in rectifying this initial inconsistency when again no semblance of explanation was forthcoming from the postal channels through which I sought explication.

Though mindful of the fact that the communication in no way explains the pretext for disqualification which I was originally given, my attention was nonetheless more immediately directed to the inference created by the juxtaposition of the last two sentences of the main paragraph and, as a result of the personal inquiry I informed Senator Javits I'd take upon myself, I am indeed now advised that the single supervisory evaluation submitted is considered "failing" (66%) and this is, I assume,

now purported as the reason for my original disqualification. While I am further advised by this same letter that I am now accorded an interview next month, I must hereby decline, pending full and satisfactory explanation of both the validity of interpretation of my supervisory evaluation and the complete clarification of the inconsistencies to which I am being subjected.

With full awareness of the customary degree of variance in the human interpretive experience, I must know how my evaluation can be "failing" when the supervisor who wrote it is hereby quoted as assessing it "highly favorable" and is herself completely unable to account for this inordinately extreme variance from her judgment??? She further advises that the only possible misinterpretation of her intent can arise from but a single question which she, understandably, considered "unanswerable"--something pertaining to "How high can this candidate advance in the Postal Service?"--and therefore did not respond to it. I hereby categorically deny the validity of said failing evaluation and specifically direct my request for investigation to the individual who evaluated this evaluation.

I also feel it pertinent to mention that both my immediate general foreman for the last several years, Mr. Hutchings, and my tour superintendent, Mr. Bayley, have been unable to shed any light on the matter with the most appreciated attention they've afforded me from their most pressing duties: both have expressed their willingness to add their own evaluations of all aspects of my work record. I hereby categorically deny the validity of any evaluation not conforming to these assessments of supervisors with whom I've worked for as long as 12 years or any evaluation contrary to the singular merit achieved during my postal career.

As I'm sure you agree, Mr. Postmaster, with so vital a matter as equitable and competent promotional

consideration manifestly questionable thus far, I must make every effort to have the credibility gap created by these ongoing inconsistencies bridged if I am to submit to the subjectivity of an interview at the very hands of those who have thus far evidenced such gross misjudgments during this comparatively objective segment of evaluation. I have the utmost faith that under your direction, this will be accomplished through the administrators of the U. S. Post Office Management Training Program.

I thank you for your consideration.

Respectfully,

Joseph A. De Nise

OFFICE OF THE POSTMASTER
NEW YORK, N. Y. 10001

May 8, 1973

Mr. Joseph A. De Nise
1010 Soundview Avenue
Bronx, New York 10472

Dear Mr. De Nise:

I have your letter of April 29, with reference to your candidacy for the Post Office Management Trainee Program and requesting clarification of your supervisory evaluations.

The Post Office Management Trainee Program is administered by the New York Metro Regional Office and they have advised that examinees may not have access to supervisory evaluations. They further advised that the evaluation process and method for scoring is clearly defined and no interpretation of supervisory statements are incorporated into the scoring system. Evaluations in the 60's range are indicative of individuals whose performance and potential are far above average and no inconsistency appears to exist between your rating and what you allege you were told by your supervisors.

Your interview is scheduled for Thursday, May 10th, 9:00 a.m., and it is suggested that you attend. Failure to do so may exclude you from further consideration.

Sincerely,

for John B. Strachan
Manager/Postmaster

1010 Soundview Avenue
Bronx 10472 New York

May 15, 1973

Gentlemen:

I apologize for being a day late, but rearranging your recent advisement into a coherent framework for response was a greater task than I originally anticipated. The following is, then, the more detailed explanation promised in my acknowledgment of your May 8 letter which I assume, despite the numerous times I've reread it, sought to explicate my April 29 letter to the Postmaster, primarily concerning my supervisory evaluation. Incidentally, I assume your twice pluralized "evaluations"--when used in conjunction with "supervisory"--is nothing more than grammatical license since, of course, only one supervisory evaluation was submitted for each candidate and this is indeed the text of what I'll be discussing.

If I were to approach the subject with the curiously narrow perspective and grasp of the entire situation manifest by your letter, my first reaction would be to thank you for your most flattering revelation that my evaluation is: "indicative of individuals whose performance and potential are far above average." I would then be perfectly justified in concluding, from both the positiveness of your description and the highly conspicuous absence of any further percentile perspective whatsoever, that the 60% range is certainly a favorable one and perhaps, in context presented, nearly ultimate in scale. It would then necessitate not the slightest variance from such logic to assume wholehearted agreement with your statement that: "no inconsistency appears to exist between your rating and what you allege you were told by your

supervisors." (Again we have a pluralized noun despite the fact that only one supervisor has ever been quoted in any of my written communications.) In the end, I would indeed have the highly favorable supervisory evaluation warranted.

However, reassessing the situation from the more complete perspective inexplicably lacking in yours, an official advisement, a few words about the grading scale for supervisory evaluations are obviously in order. You neglect to mention that you have set 70% as a minimum passing (satisfactory) grade. Hence, it is plausible to assume that the ultimate grade can be as high as 100% and it is fact to assume that all scores below 70% are failing (unsatisfactory) grades. You have assessed my evaluation at 66%. Therefore, despite your characterization, by literal definition of your own standards, the fact is that mine is a <u>failing</u> (unsatisfactory) evaluation.

With all due respect for your assurances that: "the evaluation process and method for scoring (supervisory evaluations) is clearly defined" on the basis of the whole of my record, as well as the assessment of the foreman who wrote said evaluation:

1) the very suggestion that any judicious evaluation process can produce a failing evaluation--66% on any scale where 70% is merely passing--whether said evaluation be expressed numerically or verbally, is impossible

2) the very suggestion that any judicious evaluation process can produce a failing evaluation--66% on any scale where 70% is merely passing--whether said evaluation be determined absolutely or relatively,

is impossible.

3) the very suggestion that any judicious evaluation process can produce anything but an excellent evaluation, whether said evaluation be expressed numerically or verbally or whether said evaluation be determined absolutely or relatively, is impossible.

Therefore, the fact is that an inconsistency--and a marked one at that--does exist between my rating and not only the quoted assessment I "allege" but, as well, between this rating and a 12 year Federal career dossier of singular merit. Incidentally, Mrs. Miriam Oback, the foreman who wrote this evaluation, has expressed her willingness to sign an affidavit certifying to the intent and substance of her estimation upon request of the appropriate authority. I therefore stand momentarily able to replace my "allegation" with a noun more factually appropriate in syntax.

It is further contended that: "no interpretation of supervisory statements are incorporated into the scoring system." Obviously the fact that the gravity of this supervisory statement originally constituted a second reason for my disqualification from any further consideration whatsoever was among the pertinent data not at your disposal as per May 8. Furthermore, notwithstanding subsequent reconsideration, am I to assume that I may so demean the standards of a U.S. Post Office promotional interview panel by even suggesting that any favorable consideration be accorded an employee whose work record has been justifiably assessed as failing???? Indeed, if such were the case, I would be compelled to disqualify myself forthwith, no matter how outstanding all of my

other qualifications were! Therefore, by virtue of merely an allegation of the very existence of a failing supervisory evaluation your suggestion to report for interview under such circumstances is rendered academic in nature: By virtue of merely an allegation of the very existence of a failing supervisory evaluation--no matter how thoroughly discarded since--said evaluation must be exposed to scrutiny if only to reaffirm the validity of your assessment which, in the absence of nary the faintest semblance of explanation for this glaring disparity, I must hereby categorically and officially challenge.

You also note that the New York Metro Regional office has: "advised that examinees may not have access to supervisory evaluations." In short, my demand for investigation of this evaluation--by whatever appropriate authority--is stayed. I shall further recommend that the appropriate authority review your assessment of 66% not only on an absolute basis but comparatively as well--against evaluations which you have assessed at the gradation I claim.

Can there be a more expedient procedure for evidencing how your "clearly defined" evaluation process has produced a grade which falls so short of the "alleged" assessment of the supervisor who wrote it? Needless to add, my future course of action in this matter will be directly and exclusively dictated by the findings of this investigation. In the end, I have the utmost confidence that what at this point can be misconstrued as an incipient effort to covert this evaluation will be completely dispelled by suitable explanation in the rectification of this gross misjudgment of my record.

Scanning the text of this note, I'm struck by the sameness of intended message between it and my April 29 letter, in which I thought I explained the existent stalemate as lucidly as possible. I can only hope that this exhaustive effort to achieve the utmost clarity of my position--at the fullest expanse of my verbal ability--is successful: I shall otherwise have to capitulate to a communication gap in the wake of this, my final discourse on this immediate impediment to the resumption of my candidacy for the U. S. Post Office Management Trainee Program.

For your assistance, on behalf of the New York Metro Regional Office, I thank you. I shall await the written reconsideration of the New York Metro Regional Office prior to the submission of this matter for final disposition.

Yours truly,

Joseph A. De Niso

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH A. DE NOE

Plaintiff.

— against —

C. V. ROWLAND, individually and as Area Postmaster General of the United States Postal Service, New York Region.

Defendant

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK.

CASE NO. 74 CIV 318

JUDGE GRIESA

INDEX TO THE RECORD ON APPEAL

APPENDIX

2 Saul J. Curran (PZ)

COPY RECEIVED
October 24, 1975
UNITED STATES ATTORNEY